



## Case Report

1	Case Number	0445/17
2	Advertiser	BMW Group Australia
3	Product	Vehicle
4	Type of Advertisement / media	Internet-Social-Inst
5	Date of Determination	11/10/2017
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving  
FCAI Motor Vehicles 2(b) Breaking the speed limit  
FCAI Motor Vehicles 2(c) Driving practice that would breach the law

### DESCRIPTION OF THE ADVERTISEMENT

The digital clip is a clip provided from our BMW Germany Headquarters, promoting electric vehicles. It showcases the all new BMW i3 driving next to a red, old fashioned sports car accelerating from an intersection and then driving along some city streets.

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*Promotion of street racing/ drag racing/ speeding in motor vehicles is highly offensive. Many Australians have had friends and family members killed or injured by partaking in these sorts of activities. This video promotes illegal street racing.*

### THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*Thank you for your correspondence regarding complaint reference number 0445/17 for the BMW i3s social media clip and the following issues raised under the Code of Practice for*

*motor vehicle advertising:*

*FCAI Motor Vehicles 2(a) Unsafe driving*

*FCAI Motor Vehicles 2(b) Breaking the speed limit*

*FCAI Motor Vehicles 2(c) Driving practice that would breach the law*

*In preparing our response below we have also been conscious of Section 2 of the AANA Advertiser Code of Ethics, in particular section 2.6 'Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety', but not limited to the following sections:*

*2.1 Discrimination or vilification*

*2.2 Exploitative and degrading*

*2.3 Violence*

*2.4 Sex, sexuality and nudity*

*2.5 Language*

*2.6 Health and Safety*

*Attached is a copy of the digital clip itself to assist in the review process. This video was published on Youtube and Facebook/Instagram on 22 September 2017. A CAD letter has not been provided in this case, as it is not deemed necessary to gain approval for social media content. A script is not available due to the content coming centrally out of our BMW marketing headquarters in Germany and there is no voice over.*

*The specific complaint made is 'Promoting of street racing/drag racing/speeding in motor vehicles is highly offensive.'*

*As demonstrated in the attached 30 sec digital clip, there are two cars featured: the red vehicle shown in the clip is not a BMW and is an old fashioned car, depicting a scenario whereby an older vehicle is out of date, promoting the new-electric car as the way of the future. The clip demonstrates a comparison of old versus electric, to endorse the power of electricity is better than a classic car, and to discourage vehicles that pollute the environment and create emissions, not to depict a drag race.*

*At the 15 second mark, there is slight haze raised from behind the red car, caused by the natural motion of the old fashioned vehicle accelerating, but it is not excessive. At no time are the vehicles speeding nor does the driver lose control of the vehicle.*

*The vehicles' headlights are turned on during the scenes depicted at night-time. In some scenes there are two vehicles that are driving side by side, however they are both within their own lanes and the speed odometer is never shown to imply speeding is occurring.*

*The commercial utilises motion lighting effects, and jump cut edits that add energy to the overall clip. The vehicles are never speeding and the clip was filmed under controlled, closed road conditions.*

## **THE DETERMINATION**

The Advertising Standards Board (Board) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice (the FCAI Code).

To come within the FCAI Code, the material being considered must be an advertisement. The FCAI Code defines an advertisement as follows: "matter which is published or broadcast in all of Australia, or in a substantial section of Australia, for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct".

The Board then considered whether that advertisement was for a motor vehicle. Motor vehicle is defined in the FCAI Code as meaning: "passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle". The Board determined that the BMW i3 was a Motor Vehicle as defined in the FCAI Code.

The Board determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

The Board noted the complainant's concerns that the advertisement depicts speeding and street (drag) racing which is dangerous and illegal.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement.

The Board considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: 'Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.'

The Board noted the guidance to advertisers in the explanatory notes states that: "Advertisers should avoid references to the speed or acceleration capabilities of a motor vehicle (for example, "0-100 km/h in 6.5 seconds")."

The Board noted the advertisement features one vehicle stopped at an intersection with a red traffic light displayed. A second vehicle pulls up next to it and the drivers glance across at each other. When the lights turn green the vehicles accelerate away from the intersection. The words appear on screen: "Can lightweight beat heavyweight?" From 0-100KM/H in 6.9 SEC. Born electric. The all new electric BMW i3. The BMW is then seen driving through the city streets and the BMW logo appears in the last on screen shot.

The Board noted the advertiser's response that the advertisement was filmed under controlled, closed road conditions.

The Board noted that the beginning of the advertisement shows the vehicles take off from the line when the lights turn green as if in a race and that the drivers look to each other to acknowledge the potential for a challenge and that there is a reference to "from 0-100KH/H in 6.9 sec" which in a traffic situation is unsafe.

The Board acknowledged that there is a level of community concern around unsafe driving and considered that the initial scene of two usual vehicles setting in a manner that suggests

they are going to race is an activity that is regarded as reckless by members of the community.

The Board noted that the older vehicle performs a burnout at the commencement of the race trying to get traction. There is smoke evident from the tyres at this point.

The Board noted the Road Rules as outlined in the Transport Operations (Road Use Management – Road Rules) Regulation 2009-SECT 291 Making unnecessary noise or smoke – QLD

The Board noted section 291 that states that:

Transport Operations (Road Use Management—Road Rules) Regulation 2009 - SECT 291  
291 Making unnecessary noise or smoke 291 Making unnecessary noise or smoke

(1) A person must not—

- (a) start a vehicle, or drive a vehicle, in a way that makes unnecessary noise or smoke; or
- (b) wilfully start a vehicle, or drive a vehicle, in a way that makes unnecessary noise or smoke.

\* Example for paragraph (a)—

\* driving a vehicle in a way that causes noise or smoke because of—

\* disrepair of the vehicle; or

\* the way the vehicle is loaded; or

\* the condition, construction or adjustment of the vehicle's engine or other equipment

\* Example for paragraph (b)—

\* driving a vehicle in a way that causes noise or smoke by wilfully and unnecessarily causing the wheels of the vehicle to lose traction and spin on the road surface

\* Note—

\* An offence against paragraph (b) is an offence mentioned in the Police Powers and Responsibilities Act 2000, section 69A(1)(a)(iv).

The Board noted that while state and territories may have slight variations on these regulations the general principles are the same.

The Board noted that the road rules clearly state that a person must not drive a vehicle in a way that wilfully makes unnecessary noise or smoke and considered that as the driver of one of the vehicle deliberately accelerates creating smoke and loss of traction, and this is a depiction in breach of the road rules.

Based on the above, the Board considered that overall the advertisement does portray reckless driving which is unsafe and would breach any Commonwealth law or the law of any State or Territory.

The Board determined that the advertisement did breach Clause 2(a) of the FCAI Code.

The Board then considered clause 2(b) of the FCAI Code. Clause 2(b) requires that “Advertisements for motor vehicles do not portray: people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.”

The Board noted the Explanatory Notes to the FCAI which state, “Advertisers should ensure that advertisements...avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle.”

The Board noted that there is no indication of the speed that either vehicle is being driven at in the advertisement or of the speed limits of the road the vehicle is driving on. The Board considered that there is no accurate sense of the speed the vehicle is travelling, therefore the vehicles are not shown being driven in excess of applicable legal speed limits in the footage, nor are there any close up shots of a speedometer reading and reference to any speed limits being exceeded.

The Board determined that the advertisement did not depict excessive speeding and therefore did not breach Clause 2(b) of the FCAI Code.

The Board lastly considered clause 2(c) of the FCAI Code. Clause 2(c) requires that ‘Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.’

(examples: illegal use of hand-held mobile phones or not wearing seat belts in a moving motor vehicle. Motor cyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion].”

The Board considered that the advertisement is similar to previously dismissed advertisements for BMW (0374/17, 0375/17, 0376/17 and 0377/17) showing the performance capabilities of the vehicle and considered that the advertisement does not depict a driving practice as outlined in the examples above that would breach any law and determined that the advertisement did not breach clause 2(c) of the FCAI Code.

Finding that the advertisement did breach the FCAI Code section 2(a) of the FCAI code, the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

We have removed this advertisements from all forms of media as at 12 October 2017. We have no intention to modify or publish this advertisement in the future.

